

§ 1230.111

[63 FR 45936, Aug. 28, 1998]

§ 1230.111 Remittance of assessments on domestic porcine animals.

Assessments on domestic porcine animals shall be remitted to the National Pork Board pursuant to §1230.71(b) in accordance with the following remittance schedule.

(a) Monthly assessments totaling \$25 or more shall be remitted to the Board by the 15th day of the month following the month in which the porcine animals were marketed or by the 15th day following the end of a Board-approved, consecutive 4-week period in which the porcine animals were marketed.

(b) Assessments totaling less than \$25 during each month of a quarter in which the porcine animals were marketed may be accumulated and remitted by the 15th day of the month following the end of a quarter. The quarters shall be: January through March; April through June; July through September; October through December.

(c) Assessments totaling \$25 or more during any month of a quarter must be remitted by the 15th day of the month following the month of the quarter in which the assessments totaled \$25 or more, together with any unremitted assessments from the previous month(s) of the quarter, if applicable.

(d) Assessments collected during any calendar quarter and not previously remitted as described in paragraphs (b) or (c) of this section must be remitted by the 15th day of the month following the end of the quarter regardless of the amount.

[56 FR 6, Jan. 2, 1991]

§ 1230.112 Rate of assessment.

In accordance with §1230.71(d) the rate of assessment shall be 0.45 percent of market value.

[60 FR 29965, June 7, 1995]

§ 1230.115 Submission of annual financial statements.

State Pork Producer Associations, as defined in §1230.25, that receive distributions of assessments pursuant to §1230.72 and that receive less than \$30,000 in assessments annually, may satisfy the requirements of §1230.74(b) by providing to the Board unaudited

7 CFR Ch. XI (1–1–99 Edition)

annual financial statements prepared by State association staff members or individuals who prepare annual financial statements, provided that two members of the State association attest to and certify such financial statements. Notwithstanding any provisions of the Order to the contrary, State associations that receive less than \$30,000 in distributed assessments annually and submit unaudited annual financial statements to the Board shall be required to submit an annual financial statement audited by a certified public accountant at least once every 5 years, or more frequently if deemed necessary by the Board or the Secretary. The Board may elect to conduct its own audit of the annual financial statements of State Pork Producer Associations that receive less than \$2,000 in distributed assessments annually, every 5 years in lieu of the required financial statements.

[60 FR 33683, June 29, 1995]

MISCELLANEOUS

§ 1230.120 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0851–0151.

Subpart C [Reserved]

Subpart D—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body

§ 1230.501–1230.512 [Reserved]

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

DEFINITIONS

Sec.
1240.1 Secretary.
1240.2 Act.

Agricultural Marketing Service, USDA

§ 1240.4

- 1240.3 Person.
- 1240.4 Honey.
- 1240.5 Honey products.
- 1240.6 Producer.
- 1240.7 Handle.
- 1240.8 Handler.
- 1240.9 Producer-packer.
- 1240.10 Importer.
- 1240.11 Exporter.
- 1240.12 Promotion.
- 1240.13 Research.
- 1240.14 Consumer education.
- 1240.15 Marketing.
- 1240.16 Committee.
- 1240.17 State association.
- 1240.18 Honey Board.
- 1240.19 State.
- 1240.20 Fiscal period and marketing year.
- 1240.21 Plans and projects.
- 1240.22 Part and subpart.

HONEY BOARD

- 1240.30 Establishment and membership.
- 1240.31 Term of office.
- 1240.32 Nominations.
- 1240.34 Vacancies.
- 1240.35 Procedure.
- 1240.36 Attendance.
- 1240.37 Powers.
- 1240.38 Duties.

RESEARCH, PROMOTION, AND CONSUMER EDUCATION

- 1240.39 Research, promotion, and consumer education.

EXPENSES AND ASSESSMENTS

- 1240.40 Budget and expenses.
- 1240.41 Assessments.
- 1240.42 Exemption from assessment.
- 1240.43 State assessment plan refund.
- 1240.44 Operating reserve.

REPORTS, BOOKS, AND RECORDS

- 1240.50 Reports.
- 1240.51 Books and records.
- 1240.52 Confidential treatment.

MISCELLANEOUS

- 1240.60 Influencing governmental action.
- 1240.61 Right of the Secretary.
- 1240.62 Suspension or termination.
- 1240.63 Proceedings after termination.
- 1240.64 Effect of termination or amendment.
- 1240.65 Personal liability.
- 1240.66 Separability.
- 1240.67 Patents, copyrights, inventions, product formulations, and publications.

Subpart—General Rules and Regulations

- 1240.100 Terms defined.
- 1240.105 Definitions.
- 1240.106 Communications.
- 1240.107 Policy and objective.
- 1240.108 Contracts.

- 1240.109 Procedure.
- 1240.110 U.S. Department of Agriculture costs.
- 1240.111 First handler and producer-packer.
- 1240.113 Importer.
- 1240.114 Exemption procedures.
- 1240.115 Levy of assessments.
- 1240.116 Payment of assessments.
- 1240.118 Reports of disposition of exempted honey.
- 1240.119 Reporting period and reports.
- 1240.120 Retention period for records.
- 1240.121 Availability of records.
- 1240.122 Confidential books, records, and reports.
- 1240.123 Right of the Secretary.
- 1240.124 Personal liability.
- 1240.125 OMB control numbers.

Subpart—Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order

- 1240.200 General.
- 1240.201 Definitions.
- 1240.202 Voting.
- 1240.203 Instructions.
- 1240.204 Subagents.
- 1240.205 Ballots.
- 1240.206 Referendum report.
- 1240.207 Confidential information.

AUTHORITY: 7 U.S.C. 4601-4612.

SOURCE: 51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, unless otherwise noted.

DEFINITIONS

§ 1240.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his/her stead.

§ 1240.2 Act.

Act means the Honey Research, Promotion, and Consumer Information Act (Pub. L. 98-590) and any amendments thereto.

§ 1240.3 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1240.4 Honey.

Honey means the nectar and saccharine exudations of plants which are

§ 1240.5

gathered, modified, and stored in the comb by honey bees.

§ 1240.5 Honey products.

Honey products means products wherein honey is a principal ingredient.

§ 1240.6 Producer.

Producer means any person who produces honey in any State for sale in commerce.

§ 1240.7 Handle.

Handle means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in the current of commerce. Such term shall include selling unprocessed honey that will be consumed without further processing or packaging. Such term shall not include the transportation of unprocessed honey by the producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the handler or producer.

§ 1240.8 Handler.

Handler means any person who handles honey or honey products.

§ 1240.9 Producer-packer.

Producer-packer means any person who is both a producer and handler of honey or honey products.

§ 1240.10 Importer.

Importer means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such honey or honey products.

[56 FR 37456, Aug. 7, 1991]

§ 1240.11 Exporter.

Exporter means any person who exports honey or honey products from the United States.

[56 FR 37456, Aug. 7, 1991]

7 CFR Ch. XI (1–1–99 Edition)

§ 1240.12 Promotion.

Promotion means any action, including paid advertising and public relations, to present a favorable image for honey or honey products to the public with the express intent of improving the competitive position and stimulating sales of honey or honey products.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.13 Research.

Research means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.14 Consumer education.

Consumer education means the act of providing information to the public on the usage and care of honey and honey products.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.15 Marketing.

Marketing means the sale or other disposition in commerce of honey or honey products.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.16 Committee.

Committee means or the *National Honey Nominations Committee* means the Committee established pursuant to § 1240.32.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.17 State association.

State association or *association* means that organization of beekeepers in a State which is generally recognized as

Agricultural Marketing Service, USDA

§ 1240.32

representing the beekeepers of that State.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.18 Honey Board.

Honey Board or the *Board* means the administrative body established pursuant to § 1240.30.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.19 State.

State means any of the fifty States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.20 Fiscal period and marketing year.

Fiscal period and *marketing year* means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.21 Plans and projects.

Plans and *projects* means those research, promotion, and consumer education plans, studies, or projects established pursuant to §§ 1240.38 and 1240.39.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

§ 1240.22 Part and subpart.

Part means the Honey Research, Promotion, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the order shall be a "subpart" of such part.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986. Redesignated at 56 FR 37456, Aug. 7, 1991]

HONEY BOARD

§ 1240.30 Establishment and membership.

A Honey Board (hereinafter called the Board) is hereby established to administer the terms and provisions of this part. The Board shall consist of thirteen (13) members, each of whom shall have an alternate. Seven members and seven alternates shall be honey producers; two members and two alternates shall be honey handlers; two members and two alternates shall be either honey importers or exporters of which at least one member and alternate shall be an importer; one member and one alternate shall be an officer or employee of a honey marketing cooperative; and, one member and one alternate shall be selected to represent the general public. The Board shall be appointed by the Secretary from nominations submitted by the National Honey Nominations Committee, pursuant to § 1240.32.

[56 FR 37456, Aug. 7, 1991]

§ 1240.31 Term of office.

The members of the Board and their alternates shall serve for terms of three years, except the members of the initial Board shall be designated for, and shall serve terms as follows: Four members and alternates shall serve for one-year terms; four shall serve for two-year terms; and five shall serve for three-year terms. No member or alternate shall serve more than two consecutive terms: *Provided*, That those members and alternates serving the initial term of one year may serve two additional consecutive three-year terms. The term of office for the initial Board shall begin immediately on appointment by the Secretary. In subsequent years, the term of office shall begin on April 1. Each member and alternate member shall continue to serve until his/her successor is selected and has accepted.

§ 1240.32 Nominations.

All nominations to the Board authorized under § 1240.30 herein shall be made in the following manner.

(a) *Establishment of National Honey Nominations Committee.* (1) There is hereby established a National Honey

Nominations Committee, hereinafter called the Committee, which shall consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State Association. Wherever there is more than one eligible association within a State, the Secretary shall designate the association most representative of the honey producers, handlers, importers and exporters not exempt under sections 1240.42 (a) and (b) to make nominations for that State.

(2) If a State Association does not submit a nomination for the Committee, the Secretary may select a member of the honey industry from that State to represent that State on the Committee. However, if a State which is not one of the top twenty honey producing States (as determined by the Secretary) does not submit a nomination, such State shall not be represented on the Committee.

(3) Members of the Committee shall serve for three-year terms, except members of the initial Committee shall serve for terms as follows: One-third of such members shall serve one-year terms; one-third shall serve two-year terms; and one-third shall serve three-year terms. No member shall serve more than two consecutive three-year terms: *Provided*, That those members serving the initial term of one year may serve two additional consecutive three-year terms. The term of office for the initial Committee shall begin immediately on appointment by the Secretary. In subsequent years, the term of office shall begin on January 1.

(4) The Committee shall select its Chairperson by a majority vote.

(5) The members of the Committee shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred in performing their duties as members of the Committee and approved by the Board. Such expenses shall be paid from funds collected by the Board pursuant to § 1240.41.

(b) *Nominations to the Board.* (1) Except for the member and alternate who represent the general public, the Committee shall nominate the members and alternate members of the Honey Board and submit such nominations promptly to the Secretary for ap-

proval. The Committee shall also submit a list of candidates to the Secretary for the public member and alternate public member position. The Secretary may choose from that list of names or, at his/her discretion, choose other candidates to fill the public member and alternate position.

(2) After the first meeting, the Committee shall meet annually to make such nominations, or at the determination of the Chairperson, the Committee may conduct its business by mail ballot in lieu of an annual meeting.

(3) A majority of the Committee shall constitute a quorum for voting at an annual meeting. In the event of a mail ballot, votes must be received from a majority of the Committee to constitute a quorum.

(4) At least 50 percent of the members from the twenty leading honey-producing states must vote in any nomination of members to the Board.

(5) For the purpose of nominating producer members to the Board, the Secretary shall establish seven regions on the basis of the production of honey. For the purpose of facilitating initial nominations to the Honey Board, the following regions shall be the initial regions:

Region 1: Washington, Oregon, Idaho, California, Nevada, Utah, Alaska, and Hawaii.

Region 2: Montana, Wyoming, Nebraska, Kansas, Colorado, Arizona, and New Mexico.

Region 3: North Dakota and South Dakota.

Region 4: Minnesota, Iowa, Wisconsin, and Michigan.

Region 5: Texas, Oklahoma, Missouri, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama.

Region 6: Florida, Georgia, and Puerto Rico.

Region 7: Illinois, Indiana, Ohio, Kentucky, Virginia, North Carolina, South Carolina, West Virginia, Maryland, District of Columbia, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine.

(6) Every five years, the Board shall review the regions to determine whether new regions should be established. In making such review, it shall give consideration to:

(i) The average quantity of honey produced during the most recent three years;

- (ii) Shifts and trends in quantities of honey produced;
- (iii) The equitable relationship of Board membership and districts; and
- (iv) Other relevant factors.

As a result of this review, the Board may recommend for the Secretary's approval the reestablishment of such regions. Any such reestablishment of regions shall be made at least six months prior to the date on which terms of office of the Board begin each year and shall become effective at least 30 days prior to such date.

(7) In nominating producer members to the Board, no producer-packer who, during any three of the preceding five years, purchased for resale more honey than such producer-packer produced shall be eligible for nomination or appointment to the Honey Board as a producer or as an alternate to such producer.

(8) The initial Committee shall within 90 days of the announcement of issuance of this order, or such other period as prescribed by the Secretary, submit in a manner prescribed by the Secretary the following nominations:

- (i) One producer member and one alternate producer member from each of the seven regions established by the Secretary;
- (ii) Two handler members and two alternate handler members from recommendations made by industry organizations representing handler interests;
- (iii) Two importer members or one importer and one exporter member, and two alternate importer members or one importer and one exporter alternate member from recommendations made by industry organizations representing importer and/or exporter interests; and
- (iv) One member and one alternate who are officers or employee of honey marketing cooperatives.
- (v) For subsequent years, the Committee shall submit its nominations to the Secretary one month before the new Board terms begin.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37456, Aug. 7, 1991]

§ 1240.34 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant, except that if, as a result of the adjustment of the boundaries of the regions in accordance with § 1240.32(b)(6), a producer member or alternate is no longer from the region from which such person was appointed, such member or alternate may serve out the term for which such person was appointed.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that he/she be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, he/she shall remove such member from office.

(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. At its next meeting, the Honey Nominations Committee shall nominate a replacement for said alternate. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be nominated and appointed in the manner specified in §§ 1240.30 and 1240.32, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37456, Aug. 7, 1991]

§ 1240.35 Procedure.

(a) Seven members, including alternates acting in place of members of the Board, shall constitute a quorum; *Provided*, That such alternates shall serve only whenever the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In matters of an emergency nature when there is not enough time to

call an assembled meeting of the Board, the Board may act upon the concurring votes of a majority of its members by mail, telephone, telegraph, or by other means of communication: *Provided*, That each proposition is explained accurately, fully, and substantially identically to each member. All telephone votes shall be promptly confirmed in writing and recorded in the Board minutes.

§ 1240.36 Attendance.

Members of the Board and the members of any special panels shall be reimbursed for reasonable out-of-pocket expenses incurred when performing Board business. The Board shall have the authority to request the attendance of alternates of any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 1240.37 Powers.

The Board shall have the following powers subject to § 1240.61:

- (a) To administer this subpart in accordance with its terms and provisions of the Act;
- (b) To make rules and regulations to effectuate the terms and conditions of this subpart;
- (c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this part; and
- (d) To recommend to the Secretary amendments to this part.

§ 1240.38 Duties.

The Board shall have, among other things, the following duties:

- (a) To meet and organize and to select from among its members a chairperson and such other officers as may be necessary; to select committees and subcommittees from its membership and consultants; to adopt such rules, regulations, and by-laws for the conduct of its business as it may deem advisable.
- (b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;
- (c) To prepare and submit to the Secretary for his/her approval, a budget on

a fiscal period basis of its anticipated expenses in the administration of this part including the probable costs of all programs or projects and to recommend a rate of assessment with respect thereto;

(d) To investigate violations of the order and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the order.

(e) To develop programs and projects and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs or projects of research, development, advertising, promotion, or education, and the payment of the costs thereof with funds collected pursuant to this part;

(f) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it;

(g) To periodically prepare and make public and to make available to producers and importers, reports of its activities carried out, and at least once each fiscal period to make public an accounting of funds received and expended;

(h) To cause its books to be audited by a certified public accountant at the end of each fiscal period and to submit a copy of each audit to the Secretary;

(i) To give to the Secretary the same notice of meetings of the Board and subcommittees as is given to members in order that representatives of the Secretary may attend such meetings;

(j) To submit to the Secretary such information pertaining to this subpart as he/she may request;

(k) To notify honey producers, producer-packers, handlers, importers, and exporters of all Board meetings through press releases or other means;

(l) To appoint and convene, from time to time, working committees drawn from producers, honey handlers, importers, exporters, members of the wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, and consumer education programs for honey; and

Agricultural Marketing Service, USDA

§ 1240.40

(m) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of projects or activities to effectuate the declared purpose of the Act.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37456, Aug. 7, 1991]

RESEARCH, PROMOTION, AND CONSUMER EDUCATION

§ 1240.39 Research, promotion, and consumer education.

The Board shall develop and submit to the Secretary for approval any plans or projects authorized in this section. Such plans or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate plans or projects for consumer education, advertising, and promotion of honey and honey products designed to strengthen the position of the honey industry in the marketplace and to maintain, develop, and expand markets for honey and honey products;

(b) The establishment and conduct of marketing research and development projects to the end that the acquisition of knowledge pertaining to honey and honey products or their consumption and use may be encouraged or expanded, or to the end that the marketing and utilization of honey and honey products may be encouraged, expanded, improved or made more efficient: *Provided*, That quality control, grade standards, supply management programs, or other programs that would otherwise limit the right of the individual honey producer to produce honey shall not be conducted under, or as a part of this subpart;

(c) The development and expansion of honey and honey product sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each plan or project authorized under this part to insure that each plan

or project contributes to an effective and coordinated program of research, education, and promotion and submit such evaluation to the Secretary. If the Board or the Secretary finds that a plan or project does not further the purposes of the Act, then the Board shall terminate such plan or project; and

(f) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, and consumer education, and pay for the costs of such contracts or agreements with funds collected pursuant to § 1240.41.

EXPENSES AND ASSESSMENTS

§ 1240.40 Budget and expenses.

(a) At the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of the Order, including expenses of the Committee and probable costs of research, promotion, and consumer education.

(b) The Board is authorized to incur expenses for research, promotion, and consumer education, such other expenses for the administration, maintenance, and functioning of the Board and the Committee as may be authorized by the Secretary, any operating reserve established pursuant to § 1240.44, and those administrative costs incurred by the Department specified in paragraph (c) of this section. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1240.41, donations from any person not subject to assessments under this order and other funds available to the Board including those collected pursuant to § 1240.67 and subject to the limitations contained therein.

(c) The Board shall reimburse the Department from assessments for administrative costs incurred by the Department with respect to this order after its promulgation. The Department shall also be reimbursed for administrative expenses incurred by it for the conduct of referenda.

§ 1240.41 Assessments.

(a) Each producer and importer shall pay to the Board, upon demand, his/her pro rata share of such expenses as may be approved by the Secretary pursuant to § 1240.40. Such pro rata share shall be the amount established by the Secretary pursuant to paragraph (c) of this section.

(b) Except as provided in § 1240.42 and in paragraphs (e), (f), and (g) of this section, the first handler shall be responsible for the collection of such assessment from the producer and payment thereof to the Board. The first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler.

(c) The assessment on honey shall be levied at a rate fixed by the Secretary which shall be \$0.01 per pound of honey or honey used in honey products.

(d) Should a deficit occur during any fiscal period, funds to cover the deficit may be obtained by increasing the rate of assessment subject to the limitations in paragraph (c) of this section. The increased rate of assessment shall be applied to all honey and the honey used in products wherein honey is the primary ingredient sold in the States during that particular fiscal period so that the total payments by each person during each fiscal period will be proportional to the total value of the honey and honey products sold during that period.

(e) The importer of imported honey and honey products shall pay the assessment to the Board at the time of entry of such honey and honey products into any State.

(f) Producer-packers shall pay to the Board the assessment on the honey for which they act as first handler.

(g) Whenever a loan is made on honey under the Honey Loan-Price Support Program, the Secretary shall provide that the assessment be deducted from the proceeds of the loan or the loan deficiency payment, if applicable, and that the amount of such assessment shall be forwarded to the Board, except that the assessment shall not be deducted by the Secretary in the case of a honey marketing cooperative that has already deducted the assessment. As soon as practicable after the assess-

ment is deducted from the loan funds or loan deficiency payment, the Secretary shall provide the producer with proof of payment of the assessment.

(h) Should a first handler or the Secretary fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board.

(i) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to regulations issued hereunder. Such regulations may provide for different handler, importer, or producer-packer payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(j) There shall be a late payment charge imposed on any handler, importer, or producer-packer who fails to remit to the Board the total amount for which any such handler, importer, or producer-packer is liable on or before the payment due date established by the Board under paragraph (h) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(k) There shall also be imposed on any handler, importer, or producer-packer subject to a late payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler, importer, or producer-packer is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary, but shall not exceed the maximum legal rate of interest, if any, as established by Congress.

(l) The Board is hereby authorized to accept advance payment of assessments by handlers, importers, or producer-packers that shall be credited toward any amount for which the handlers, importers or producer-packers may become liable. The Board is not obligated to pay interest on any advance payment.

(m) The Board is hereby authorized to borrow money for the payment of expenses subject to the same fiscal,

budget, and audit controls as other funds of the Board.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37456, Aug. 7, 1991]

§ 1240.42 Exemption from assessment.

(a) A producer who produces less than 6,000 pounds of honey per year, or a producer-packer who produces and handles less than 6,000 pounds of honey per year or an importer who imports less than 6,000 pounds of honey per year on honey which such person distributes directly through local retail outlets such as roadside stands, farmers markets, groceries, or other outlets as otherwise determined by the Secretary, during such year shall be eligible for an exemption from the assessment.

(b) A producer or importer who consumes honey at home or donates honey to a nonprofit, government, or other entity, as determined appropriate by the Secretary, rather than sell such honey, shall be exempt from the assessment on that honey so consumed or donated, except for honey donated that is later sold in a commercial outlet by a donee or donee's assignee.

(c) To claim such exemption, a producer, producer-packer, or importer shall submit an application to the Board stating the basis on which the person claims the exemption for such year.

(d) If, after a person claims an exemption from assessments for any year under this subparagraph, and such person no longer meets the requirements of this subparagraph for an exemption, such person shall file a report with the Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey produced or imported by such person during the year for which the person claimed the exemption.

(e) The Board may recommend to the Secretary that honey exported from the States be exempted from the provisions of this order, and include procedures for the refund of assessments on such honey and such safeguards as may be necessary to prevent improper use of this exemption.

(f) The Board shall determine those States that are operating a program

with objectives comparable to the objectives of the Act and recommend to the Secretary that they be exempted from a portion of the assessments collected by the Federal program. The amount of such assessments subject to exemption shall not exceed the amount authorized by the State plan on January 1, 1985, unless a State provides evidence that it was in the process of promulgating a different assessment level on January 1, 1985, then the new assessment level promulgated will be exempt upon approval of the honey producers in that State. Producers having an exemption from a portion of the assessments under this order, due to payment of assessments to a State plan, shall be required to furnish evidence to the Board that the assessments to the State plan have been paid.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37457, Aug. 7, 1991]

§ 1240.43 State assessment plan refund.

Any State authority operating pursuant to a State assessment plan satisfying the conditions of paragraph (a) of this section may obtain a refund of assessments collected by the Board on honey and/or honey products produced in that State except as provided in paragraph (b) of this section.

(a) Refunds shall be paid only if the Secretary certifies that the State assessment plan:

(1) Is comparable to the program established under the Act and this part; and

(2) Was in existence and in operation on January 1, 1985.

(b) Refunds shall be made directly to States, and in no event shall exceed the amount collected by the Board on honey produced in the requesting State, and the amount of any refund shall be limited in accordance with the provisions of this subpart.

[56 FR 64476, Dec. 10, 1991]

§ 1240.44 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided*, That the funds in the reserve

§ 1240.50

shall not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

REPORTS, BOOKS, AND RECORDS

§ 1240.50 Reports.

Each handler, importer, or producer-packer subject to this part shall be required to report to the employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For handlers or producer-packers, total quantity of honey acquired during the reporting period; total quantity handled during such period; amount of honey acquired from each producer, giving name and address of each producer; assessments collected or collectible during the reporting period; quantity of honey processed for sale from producer-packer's own production; and record of each transaction for honey on which assessment had already been paid, including statement from seller that assessment had been paid.

(b) For importers, total quantity of honey imported during the reporting period and a record of each importation of honey during such period, giving quantity, date, and port of entry.

(c) For persons who have an exemption from assessments under § 1240.42 (a) and (b), such information as deemed necessary by the Board, and approved by the Secretary, concerning the exemption including disposition of exempted honey.

[56 FR 37457, Aug. 7, 1991, as amended at 59 FR 22493, May 2, 1994]

§ 1240.51 Books and records.

Each handler, importer, producer-packer, or any person who receives an exemption from assessments shall maintain and during normal business hours make available for inspection by employees of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any

7 CFR Ch. XI (1–1–99 Edition)

required reports. Such records shall be maintained for two years beyond the first period of their applicability.

[56 FR 37457, Aug. 7, 1991]

§ 1240.52 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1240.50 and 1240.51 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to any order, if such statements do not identify the information furnished by any person;

(b) The publication by direction of the Secretary, of the name of any person convicted of violating this subpart, together with a statement of the particular provisions of the Order violated by such person.

(c) Any disclosure of any confidential information by any employee of the Board shall be considered willful misconduct.

MISCELLANEOUS

§ 1240.60 Influencing governmental action.

No funds collected by the Board under this order shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided for in this subpart.

§ 1240.61 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1240.62 Suspension or termination.

(a) The Secretary shall, whenever he/she finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provisions thereof.

(b) Except as otherwise provided in paragraph (c) of this section, five years from the date the Secretary issues an order authorizing the collection of assessments on honey under provisions of this subpart, and every five years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the termination or suspension of this subpart.

(c) In lieu of the first referendum otherwise required to be conducted under paragraph (b) of this section for the order in effect, the Secretary shall conduct a referendum to determine if honey producers and importers favor:

(1) Continuation of the order; and

(2) Termination of the authority for producers and importers to obtain a refund of assessments under §§ 1240.43 (a) and (b).

(d) The Secretary shall hold a referendum on the request of the Board, or when petitioned by 10 percent or more of the honey producers and importers to determine if the honey producers and importers favor termination or suspension of this subpart.

[51 FR 26148, July 21, 1986; 51 FR 29210, Aug. 15, 1986, as amended at 56 FR 37457, Aug. 7, 1991]

§ 1240.63 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1240.38;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and

(4) Upon the direction of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the honey research or education programs hitherto authorized.

§ 1240.64 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or of any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of any person, with respect to any such violation.

§ 1240.65 Personal liability.

No member, alternate member, or employee of the Board shall be held

personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee, except for acts of dishonesty or willful misconduct.

§ 1240.66 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1240.67 Patents, copyrights, inventions, product formulations, and publications.

Except for a reasonable royalty paid by the Board to the inventor of a patented invention, any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the Honey Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall inure to the benefit of the Board and shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board.

[56 FR 37457, Aug. 7, 1991]

Subpart—General Rules and Regulations

SOURCE: 52 FR 3103, Feb. 2, 1987, unless otherwise noted.

§ 1240.100 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart—Honey Research, Promotion, and Consumer Information Order. Additional terms are defined in § 1240.105.

§ 1240.105 Definitions.

(a) *Principal ingredient* means fifty-one percent or more by weight of the

total ingredients contained in honey products.

(b) *First handler* means the person who first handles honey.

(c) *Order* means the Honey Research, Promotion, and Consumer Information Order which appears in this part.

(d) *United States* means the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1240.106 Communications.

Communications in connection with the Order and all rules, regulations, and supplemental Orders issued thereunder shall be addressed to the National Honey Board, 421 21st Street, Longmont, Colorado 80501-1421.

[56 FR 37458, Aug. 7, 1991]

§ 1240.107 Policy and objective.

(a) It shall be the policy of the Board to carry out an effective and continuous coordinated program of marketing research, development, advertising, and promotion in order to help maintain and expand existing domestic and foreign markets for honey and to develop new or improved markets.

(b) It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the honey industry and no undue preference shall be given to any of the various industry segments.

§ 1240.108 Contracts.

The Board, with the approval of the Secretary, may enter into contracts or make agreements with persons for the development and submission to it of plans or projects authorized by the Order and for carrying out of such plans or projects. Contractors shall agree to comply with the provisions of this part. Subcontractors who enter into contracts or agreements with a primary contractor and who receive or otherwise utilize funds allocated by the Board shall be subject to the provisions of this part. All records of contractors and subcontractors applicable to contracts entered into by the Board are subject to audit by the Secretary.

§ 1240.109 Procedure.

The Organization of the Board and the procedure for conducting meetings

of the Board shall be in accordance with the By-Laws of the Board.

§ 1240.110 U.S. Department of Agriculture costs.

The Board shall reimburse the U.S. Department of Agriculture (USDA) from assessments for administrative costs incurred by USDA with respect to the Order after its promulgation and for any administrative expenses incurred by USDA for the conduct of referenda. The Board shall pay those administrative costs incurred by USDA for the conduct of its duties under the Order as determined periodically by the Secretary. USDA will bill the Board quarterly and payment shall be due promptly after the billing of such costs.

§ 1240.111 First handler and producer-packer.

Persons who are first handlers or producer-packers include but are not limited to the following:

(a) When a producer delivers honey from his or her own production to a packer or processor for processing in preparation for marketing and consumption, the packer or processor is the first handler, regardless of whether he or she handles the honey for his or her own account or for the account of the producer or the account of other persons.

(b) When a producer delivers honey to a handler who takes title to such honey, and places it in storage, such handler is the first handler.

(c) When a producer delivers honey to a commercial storage facility for the purpose of holding such honey under his or her own account for later sale, the first handler of such honey would be identified on the basis of later handling of such honey.

(d) When a producer packages and sells honey of his or her own production at a roadside stand or other facility to consumers or sells to wholesale or retail outlets or other buyers, the producer is a producer-packer.

(e) When a producer sells unprocessed or processed honey from his or her own production directly to a commercial user or food processor who utilizes such honey as an ingredient in the manufac-

ture of formulated products, the producer is a producer-packer.

(f) When a producer uses honey from his or her own production in the manufacture of formulated products for his or her own account and for the account of others, the producer is the producer-packer.

(g) When a producer delivers a lot of honey to a processor who processes and packages a portion of such lot of honey for his or her own account and sells the balance of the lot, with or without further processing, to another processor or commercial user, the first processor is the first handler for all the honey.

(h) When a producer supplies honey to a cooperative marketing organization which sells or markets the honey, with or without further processing and packaging, the cooperative marketing organization becomes the first handler upon physical delivery to such cooperative.

(i) When a producer uses honey from his or her own production for feeding his or her own bees, such honey is not handled at that time. Honey in any form sold and shipped to any persons for the purpose of feeding bees is handled and is subject to assessment. The buyer of the honey for feeding bees is the first handler.

§ 1240.113 Importer.

Each lot of honey and honey products imported into the United States is subject to assessment under this part. Such assessment shall be paid by the importer of such honey and honey products at the time of entry or withdrawal for consumption into the United States. Any person who imports honey or honey products into the United States as principal, agent, broker, or consignee for honey produced outside the United States and imported into the United States shall be the importer.

§ 1240.114 Exemption procedures.

(a) Producers who produce, producer-packers who produce and handle, and importers who import honey and who wish to claim an exemption from assessments pursuant to §§ 1240.42 (a) and (b) should submit an application to the Board for a certificate of exemption.

(b) Upon receipt of the claim for exemption, the Board shall investigate, to the extent practicable, the request for exemption. The Board will then issue, if deemed appropriate, an exemption certificate to each person who is eligible to receive one.

(c) The Secretary, upon recommendation by the Board, may exempt that portion of assessments collected under a qualified State plan; *Provided*, That the State plan meets all of the requirements in § 1240.42(d) of the Order.

(1) First handlers collecting assessments from producers for the State plan and the Board shall forward that portion of assessments collected under the order in excess of the State assessment to the Board.

(2) Upon request of the Board, producers having an exemption from a portion of the assessments under this Order due to payment of assessments under a State plan, shall be required to furnish evidence to the Board that the assessments to the State have been paid.

[52 FR 3103, Feb. 2, 1987, as amended at 56 FR 37458, Aug. 7, 1991; 59 FR 22493, May 2, 1994]

§ 1240.115 Levy of assessments.

(a) *Time of payment.* The assessment shall become due at the time assessable honey is first handled or entered or withdrawn for consumption into the United States pursuant to this part.

(b) An assessment of one cent per pound is levied on honey produced in the United States, on imported honey entered or withdrawn for consumption into the United States, and on honey used in imported honey products entered or withdrawn for consumption into the United States except that assessments shall not be levied on the following:

(1) Any persons other than importers holding a valid exemption certificate during the twelve month period ending on December 31;

(2) That portion of honey which does not enter the current of commerce which is utilized solely to sustain a producers or producer-packer's own colonies of bees;

(3) That portion of otherwise assessable honey which is contained in imported products wherein honey is not a

principal ingredient. Honey subject to assessment shall be assessed only once.

(c) The assessment on each lot of honey handled in the United States shall be paid by the first handler who handles, or by the producer-packer who produces and handles such honey.

(1) The first handler shall collect and pay assessments to the Board unless such handler has received documentation acceptable to the Board that the assessment has been previously paid.

(2) A producer-packer shall pay, or collect and pay, assessments to the Board unless—

(i) Such producer-packer has obtained an exemption from the Board applicable to the honey which that producer-packer produced or produced and handled; or

(ii) Has received documentation acceptable to the Board that the assessment has been previously paid.

(d) Assessments shall be levied with respect to honey pledged as collateral for a loan or loan deficiency payment under the Commodity Credit Corporation (CCC) Honey Price Support Program in accordance with an agreement entered into between the Honey Board and the CCC. The assessment will be deducted from the proceeds of the loan or loan deficiency payment by the CCC and forwarded to the Board, except that the assessment shall not be deducted in the case of a honey marketing cooperative that has already deducted the assessment or that portion of the assessment paid to a qualified State plan exempted by the Board. The Secretary, through the CCC, shall provide for the producer to receive a statement of the amount of the assessment deducted from the loan funds or loan deficiency payment promptly after each occasion when an assessment is deducted from any such loan funds or payment under this subsection.

(e) The U.S. Customs Service (USCS) will collect assessments on all honey or honey products where honey is the principal ingredient imported under its tariff schedule (HTS heading numbers 0409.00.00 and 2106.90.9988) at the time of entry or withdrawal for consumption and forward such assessment as per the agreement between the USCS and USDA. Any importer or agent who is exempt from payment of assessments

pursuant to §1240.42 (a) and (b) of the Order may apply to the Board for reimbursement of such assessment paid.

(f) A late payment charge shall be imposed on any handler, producer-packer, or importer except as otherwise authorized by the Board, who fails to pay to the Board within the time prescribed in this subpart the total amount of assessment due for which any such handler, importer, or producer-packer is liable. Fifteen days after the assessment becomes due a one-time late payment charge of 10 percent will be added to any outstanding funds due the Board.

(g) In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance except as otherwise authorized by the Board, will be added to any accounts delinquent over 30 days and will continue monthly until the outstanding balance is paid to the Board.

[52 FR 3103, Feb. 2, 1987, as amended at 53 FR 37731, Sept. 28, 1988; 56 FR 37458, Aug. 7, 1991; 61 FR 29462, June 11, 1996; 61 FR 38356, July 24, 1996]

§ 1240.116 Payment of assessments.

(a) Responsibility for payment. Unless otherwise authorized by the Board under the Act and Order, the first handler or producer-packer shall collect the assessment from the producer, or deduct such assessment from the proceeds paid to the producer on whose honey the assessment is made, and remit the assessments to the Board. The first handler or producer-packer shall furnish the producer with evidence of such payment. Any such collection or deduction of assessment shall be made not later than the time when the assessment becomes payable to the Board. Failure of the handler or producer-packer to collect or deduct such assessment does not relieve the handler or producer-packer of his or her obligation to remit the assessment to the Board. However, should a first handler or the Secretary fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board. Assessments on imported honey and honey products shall be collected as specified in §1240.115(e); *Provided*, That importers shall be responsible for

payment of any assessment amount not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States.

(b) *Payment directly to the Board.* Except as provided in paragraph (c) of this section, each first handler and producer-packer shall pay the required assessment pursuant to §1240.41 of the Order directly to the Board at the address referenced in §1240.106, for each reporting period specified in §1240.119, on or before the 15th day following the end of such period. Payment shall be in the form of a check, draft, or money order payable to the Board and shall be accompanied by a report on Board forms pursuant to §1240.50.

(c) *Prepayment of assessment.* (1) In lieu of the monthly assessment payment specified in §1240.119 of this subpart, the Board may permit first handlers or producer-packers to make advance payments of their total estimated assessments for the season to the Board prior to their actual determination of assessable honey.

(2) Persons using such procedure shall provide a monthly accounting of actual handling and assessments.

(3) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board upon request.

(d) *Payment through cooperating agency.* The Board may enter into agreements subject to approval of the Secretary authorizing other organizations to collect assessments in its behalf. All such agreements are subject to the requirements of the Act, Order, and all applicable rules and regulations under the Act and the Order.

[52 FR 3103, Feb. 2, 1987, as amended at 56 FR 37458, Aug. 7, 1991]

§ 1240.118 Reports of disposition of exempted honey.

The Board may require reports by first handlers, producer-packers, importers, or any persons who receive an exemption from assessments under §1240.42 (a) and (b) on the handling and disposition of exempted honey. Also, authorized employees of the Board or the Secretary may inspect such books

§ 1240.119

and records as are appropriate and necessary to verify the reports on such disposition.

[56 FR 37458, Aug. 7, 1991]

§ 1240.119 Reporting period and reports.

(a) For the purpose of the payment of assessments, a calendar month shall be considered the reporting period; however, other accounting periods may be used when registered with and approved by the Board in writing.

(b) Pursuant to § 1240.50 of the Order, handlers and producer-packers shall file with the Board a report for each reporting period.

(1) All reports shall contain at least the following information:

(i) The handler's or producer-packer's name and address;

(ii) Date of report (which is also date of payment to the Board);

(iii) Period covered by report; and

(iv) Total quantity of honey determined as assessable during the reporting period.

(2) Handlers or producer-packers who collect assessments from producers or withhold assessments for their accounts or pay the assessments themselves shall also include with each report a list of all such producers whose honey was handled during the period, their addresses, and to total assessable quantities handled for each such producer.

(c) Each importer shall file with the Board a monthly report containing at least the following information:

(1) The importer's name and address.

(2) The quantity of honey and honey products entered or withdrawn for consumption into the United States.

(3) The amount of assessment paid on honey and honey products entered or withdrawn for consumption into the United States to the U.S. Customs Service at the time of entry or withdrawal for consumption.

(4) The amount of any honey and honey products on which the assessment was not paid to the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States.

(d) In the event of a first handler's, producer-packer's, or importer's death, bankruptcy, receivership, or incapacity

7 CFR Ch. XI (1–1–99 Edition)

to act, the representative of the handler, producer-packer, or importer or his or her estate, shall be considered the first handler, producer-packer, or importer for the purposes of this part.

§ 1240.120 Retention period for records.

Each first handler, producer-packer, importer, or any person who receives an exemption from assessments under §§ 1240.42 (a) and (b) required to make reports pursuant to this subpart shall maintain and retain for at least two years beyond the marketing year of their applicability: One copy of each report made to the Board, records of all exempt producers, producer-packers, and importers including certification of exemption as necessary to verify the address of such exempt person and such records as are necessary to verify such reports.

[56 FR 37458, Aug. 7, 1991]

§ 1240.121 Availability of records.

Each first handler, producer-packer, importer, or any person who receives an exemption from assessments under §§ 1240.42 (a) and (b) and is required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

[56 FR 37458, Aug. 7, 1991]

§ 1240.122 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers, producer-packers, importers or any persons who receive an exemption from assessments under § 1240.42 (a) and (b) and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1240.52 of the Order.

[56 FR 37458, Aug. 7, 1991]

§ 1240.123 Right of the Secretary.

All fiscal matters, programs, projects, rules or regulations, reports, or other substantive action proposed

and prepared by the Board shall be submitted to the Secretary for approval.

§ 1240.124 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1240.125 OMB control numbers.

The control numbers assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511, are as follows: OMB Number 0581-0093, except Board member nominee information sheets which are assigned OMB Number 0505-0001.

[56 FR 37458, Aug. 7, 1991]

Subpart—Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order

AUTHORITY: Pub. L. 98-590, 7 U.S.C. 4601-4612.

SOURCE: 51 FR 17918, May 16, 1986, unless otherwise noted.

§ 1240.200 General.

Referenda to determine whether eligible producers and importers favor the termination or suspension of a Honey Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

[56 FR 37458, Aug. 7, 1991]

§ 1240.201 Definitions.

(a) *Act* means the Honey Research, Promotion, and Consumer Information Act, Pub. L. 98-590, 98th Congress, approved October 30, 1984, 7 U.S.C. 4601-4612.

(b) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has here-

tofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead; and *Department* means the U.S. Department of Agriculture.

(c) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(d) *Order* means the order (including an amendment to the order) with respect to which the Secretary has directed that a referendum be conducted.

(e) *Referendum agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(f) *Representative period* means the period designated by the Secretary pursuant to section 12 of the Act.

(g) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity. For the purpose of this definition, the term *partnership* includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called *joint ventures* wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production or importation of honey or honey products for market and the authority to transfer title to the honey and honey products so produced or imported.

(h) *Eligible producer* means any person defined as a producer or producer-packer in the order who produces, or handles, or produces and handles honey or honey products and who does not claim an exemption from paying assessments during the representative period and who:

(1) Owns or shares in the ownership of honey bee colonies or beekeeping equipment resulting in the ownership of the honey produced;

(2) Rents honey bee colonies or bee-keeping equipment resulting in the ownership of all or a portion of the honey produced; or

(3) Owns honey bee colonies or bee-keeping equipment but does not manage them and, as compensation, obtains the ownership of a portion of the honey produced;

(4) Is a party in a lessor-lessee relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey who share the risk of loss and receive a share of the honey produced. No other acquisition of legal title to honey shall be deemed to result in persons becoming eligible producers.

(i) *Eligible importer* means any person defined as an importer in the order, engaged in the importation of honey and/or honey products and who does not claim an exemption from paying assessments during the representative period. Importation occurs when commodities originating outside the United States are released from custody of the U.S. Customs Service and introduced into the stream of commerce within the United States. Included are persons who hold title to foreign-produced honey and/or honey products immediately upon release by the Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of honey and/or honey products from Customs and introduce them into the current of commerce.

(j) “Honey Board” means the administrative board provided for under section 7(c) of the Act.

[51 FR 17918, May 16, 1986, as amended at 56 FR 37459, Aug. 7, 1991]

§ 1240.202 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to only one vote in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey and/or honey products, in which more than one of the parties is a producer, shall be entitled to one vote in the referendum cov-

ering only his or her share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of a eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate may cast a ballot on behalf of such producer, importer or estate. Any individual so voting in a referendum shall certify that he or she is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate, and that he or she has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Each eligible producer and importer shall be entitled to cast only one ballot in the referendum.

§ 1240.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time when all ballots may be cast.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or importers, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter,

(2) The amount of honey produced by the voting producer during the representative period,

(3) The total volume of honey and/or honey products produced and/or imported during the representative period, and

(4) In a joint venture, names of the parties and each one's share of ownership.

(d) Give reasonable advance notice of the referendum:

(1) By utilizing available media or public information sources without advertising expense (including but not limited to, press and radio facilities) announcing the dates, places, or methods of voting, eligibility requirements, and other pertinent information, and

(2) By such other means as said agent may deem advisable.

(e) Make available to eligible producers and importers the instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order: *Provided*, That no person who claims to be eligible to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each eligible producer and importer whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballot cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such persons during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving publicity to the referendum and showing other

information pertinent to the manner in which the referendum was conducted.

[51 FR 17918, May 16, 1986, as amended at 56 FR 37459, Aug. 7, 1991]

§ 1240.204 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his or her functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) Distribute ballots and the aforesaid texts to producers and importers and receive any ballots which are cast; and

(d) Record the name and address of each person receiving a ballot from, or casting a ballot with, said subagent and inquire into the eligibility of such person to vote in the referendum.

§ 1240.205 Ballots.

The referendum agent and his or her appointees shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his or her signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1240.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1240.207

§ 1240.207 Confidential information.

All ballots cast and the contents thereof (whether or not relating to the identity of any person who voted or the manner in which any person voted) and all information furnished to, compiled by, or in possession of, the referendum agent shall be treated as confidential.

PART 1250—EGG RESEARCH AND PROMOTION

Subpart—Egg Research and Promotion Order

DEFINITIONS

- Sec.
- 1250.301 Secretary.
- 1250.302 Act.
- 1250.303 Fiscal period.
- 1250.304 Egg Board or Board.
- 1250.305 Egg producer or producer.
- 1250.306 Commercial eggs or eggs.
- 1250.307 Person.
- 1250.308 United States.
- 1250.309 Handler.
- 1250.310 Promotion.
- 1250.311 Research.
- 1250.312 Marketing.
- 1250.313 Eligible organization.
- 1250.314 Plans and projects.
- 1250.315 Part and subpart.
- 1250.316 Representative of a producer.

EGG BOARD

- 1250.326 Establishment and membership.
- 1250.327 Term of office.
- 1250.328 Nominations.
- 1250.329 Selection.
- 1250.330 Acceptance.
- 1250.331 Vacancies.
- 1250.332 Alternate members.
- 1250.333 Procedure.
- 1250.334 Compensation and reimbursement.
- 1250.335 Powers of the Board.
- 1250.336 Duties.

RESEARCH, EDUCATION, AND PROMOTION

- 1250.341 Research, education, and promotion.

EXPENSES AND ASSESSMENTS

- 1250.346 Expenses.
- 1250.347 Assessments.
- 1250.348 Exemptions.
- 1250.349 Collecting handlers and collection.
- 1250.350 [Reserved]
- 1250.351 Influencing governmental action.

REPORTS, BOOKS, AND RECORDS

- 1250.352 Reports.
- 1250.353 Books and records.
- 1250.354 Confidential treatment.

7 CFR Ch. XI (1–1–99 Edition)

CERTIFICATION OF ORGANIZATIONS

- 1250.356 Certification of organizations.

MISCELLANEOUS

- 1250.357 Suspension and termination.
- 1250.358 Proceedings after termination.
- 1250.359 Effect of termination or amendment.
- 1250.360 [Reserved]
- 1250.361 Right of the Secretary.
- 1250.362 Amendments.
- 1250.363 Separability.

Subpart—Rules and Regulations

DEFINITIONS

- 1250.500 Terms defined.

OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

- 1250.501 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

GENERAL

- 1250.505 Communications.
- 1250.506 Policy and objective.
- 1250.507 Contracts.
- 1250.508 Procedure.
- 1250.509 USDA costs.
- 1250.510 Determination of Board membership.

ASSESSMENTS, COLLECTIONS, AND REMITTANCES

- 1250.514 Levy of assessments.
- 1250.515 Reporting period and payment.
- 1250.516 Collecting handlers and collection.
- 1250.517 Remittance to Egg Board.
- 1250.518 Receipts for payment of assessments.
- 1250.519 Late-payment charge.

REGISTRATION, CERTIFICATION, AND REPORTS

- 1250.528 Registration of collecting handlers.
- 1250.529 Reports.
- 1250.530 Certification of exempt producers.

RECORDS

- 1250.535 Retention of records.
- 1250.536 Availability of records.
- 1250.537 Confidentiality.

PATENTS, COPYRIGHTS, TRADEMARKS, AND INFORMATION

- 1250.542 Patents, copyrights, trademarks, and information.

PERSONAL LIABILITY

- 1250.547 Personal liability.

AUTHORITY: 7 U.S.C. 2701–2718.